IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 545 of 2004

1. Shri Om Rathore
   S/o Shri Gajraj Singh
2. Smt. Vimla Singh
   W/o Shri Om Rathore
3. Vipin Kumar Singh
   S/o Shri Om Rathore
4. Nitin Singh Rathore
   S/o Shri Om Rathore
5. Km. Vandana Singh Rathore
   D/o Shri Om Rathore
   All R/o 446 Arya Nagar
   P.S. Jawalapur, District Hardwar …Applicants

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Kashipur
3. Smt. Rachna Gandhi Singh
   W/o Shri Vipin Kumar
   D/o Mithlesh Gandhi
   R/o Mohalla Pakkakot Kasba, P.S. Kashipur
   District Udham Singh Nagar …..Respondents.

Shri Zaffarullha Siddique and Shri Dinesh Chauhan, Advocates for the applicants.
Smt. Pushpa Joshi and Shri Jagdish Prasad, Advocate for respondent No. 3.
Learned Government Advocate for respondents No. 1 and 2.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973, the petitioners have sought quashing of charge sheet dated 30.09.2004, 03.10.2004 and 11.10.2004 in connection with case crime No. 775 of 2004 relating to offences, punishable under Section 323, 328, 498A, 506 I.P.C. and that of one punishable under Section 3/4 of Dowry Prohibition Act, 1961, P.S. Kashipur, District Udham

Singh Nagar, which have been registered as criminal case No. 1487 of 2004 and pending before Judicial Magistrate, Kashipur, District Udham Singh Nagar.

2. Brief facts of the case are that respondent No. 3-complainant Smt. Rachna Gandhi Singh, got married to petitioner No. 3- Vipin Kumar Singh on 12.12.2002. It appears that the parties did not pull along well. On 17.08.2004, a First Information Report was lodged by respondent No. 3 against her father-in-law, mother-in-law, husband, brother-in-law and sister-in-law (all petitioners), alleging that they harassed her for non-fulfilment of demanded dowry. There are allegations in the First Information Report that her in-laws used to beat her and the petitioners threatened to kill her. From the record, it appears that after investigation, charge sheets were filed by the police against the petitioners, for their trial regarding the offences, allegedly committed by them, punishable under Section 323, 328, 498A, 506 I.P.C. and under Section 3/4 Dowry Prohibition Act. On the basis of said charge sheets, criminal case No. 1487 of 2004 is pending against the petitioners, before the court of Judicial Magistrate, Kashipur.

3. Heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioners, argued that there is general practice and rampant misuse of Section 498A by the brides and their blood relations, as not only husbands with whom there is quarrel but also their all near and dear relatives are falsely implicated to teach a lesson to the family of the husbands. This Court cannot say that there are not cases where the false F.I.R's are not lodged by the brides or their parents alleging harassment due to non-fulfilment of dowry. But at the same time, merely for that reason, where in a case, police, after investigation and collecting of evidence, submits charge sheet against the accused persons, every charge sheet cannot be quashed merely on the assumption that each of such charge sheet is a consequence of misuse on the part of the bride or her parents.

5. It is contended by Shri Zaffarullha Siddique, learned counsel for the petitioners that the petitioners are innocent. In this connection, he submitted that petitioner No. 1- father-in-law of the complainant is a Junior Engineer at Hardwar and is economically not poor. It is further pointed out that the petitioner No. 3- husband of complainant is a Software Engineer and posted in Gurgaon, where he is drawing a handsome salary. It is further submitted that there is no need on the part of the petitioners to demand a dowry from respondent No. 3 or her parents in the above circumstances. These submissions advanced on behalf

of the petitioners are in defence and to persuade the court that the offence, as alleged, has not been committed in the manner it is complained by respondent No. 3. At this stage, when the petitioners are facing trial before the court of the Magistrate, it would not be just and proper on the part of this Court to appreciate or comment on the evidence, which is yet to be adduced before the trial court. It is settled principle of law that in its jurisdiction under Section 482 of Cr.P.C., High Court should not assume the role of trial court and embark upon an enquiry, as to the reliability of the evidence and sustainability of the accusation on a reasonable appreciation of such evidence.

6. Learned counsel for the petitioners, argued that in compliance of this Court's order dated 06.12.2004, the respondent No. 3 failed to appear before the Marriage Counselling Cell on the date fixed i.e. 20.12.2004. And she had filed an affidavit with wrong averment that she did attend the cell. Whether the complainant attended the Marriage counselling Cell or not, cannot be a basis for quashing the charge sheet. The order dated 06.12.2004, was passed by this Court with an intention that since it is matrimonial dispute and if the matter is amicably settled, the matrimonial home can be saved. However, that was not to be. But mere for the reason that Marriage Counselling Cell did not succeed in bringing the parties to amicable settlement, does not

mean that the criminal proceedings should not proceed further.

7. All the points raised by the petitioners, in their defence with regard to their alleged innocence, can be considered by the trial court when the evidence is adduced there. Therefore, for the reasons, as discussed above, this Court is of the view that it is not a fit case where the proceedings pending before the trial court, arisen out of the impugned charge sheet, need to be quashed under Section 482 of Cr.P.C. The petition under Section 482 of Cr.P.C. is dismissed with the observation that the petitioners may raise the points, relating to their alleged innocence before the trial court, and the petitioner, if any, who has yet to surrender, if he/she surrenders before the trial court, his/ her bail application, if moved, shall be disposed of by the trial court without unreasonable delay.

(Prafulla C. Pant, J.)

Dt. 05.09.2006

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